

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

MAILED

JAN 12 2006

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEVEN R. MITCHELL

Appeal No. 2005-1631
Application 09/528,466

ORDER REMANDING TO THE EXAMINER

Before FLEMING, Chief Administrative Patent Judge, HARKCOM, Vice Chief Administrative Patent Judge, and MACDONALD, Administrative Patent Judge.

PER CURIAM

On consideration of the record, we note that the appeal includes rejections under 35 U.S.C. § 101 involving the statutory nature of at least some of the claims on appeal.

We further note that the evaluation of such claims could possibly be affected by the Commissioner of Patent and Trademarks' published final version of the "Interim

Appeal No. 2005-1631
Application No. 09/528,466

Guidelines for Examination of Patent Application for Patent Subject Matter Eligibility," signed October 26, 2005. This document is located at the following URL:

http://www.uspto.gov/web/offices/pac/dapp/ropa/preognotice/guidelines101_20051026.pdf

Furthermore, at least one of the rejections under 35 U.S.C. § 101 is directed to whether or not the claims lie within the technological arts. The evaluation of such claims could also be possibly affected by Ex parte Lundgren, 76 USPQ2d 1385 (Bd. Pat. App. & Int. 2005). Thus, we hereby remand this application for reconsideration in view of the "Guidelines" and the recent Ex parte Lundgren decision cited above, and for any other action that the examiner deems appropriate.

REMAND

Michael R. Fleming
MICHAEL R. FLEMING, Chief
Administrative Patent Judge

Gary W. Harkcom
GARY W. HARKCOM, Vice Chief
Administrative Patent Judge

Allen R. Macdonald
ALLEN R. MACDONALD
Administrative Patent Judge

)
)
)
)
)
)
)
)
BOARD OF PATENT
APPEALS AND
INTERFERENCES

MRF:psb

Appeal No. 2005-1631
Application No. 09/528,466

Blakely Sokoloff Taylor & Zafman
12400 Wilshire Boulevard - 7th Floor
Los Angeles, CA 90025